SUPREME COURT, U. S.

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In the Supreme Court of the United States

OCTOBER TERM, 1967.

No. 1276.

ELIZAVETA DANILA, *et al.*,
Petitioners,

vs.

GEORGE DOBREA,
Executor of the Estate of John Danila, Deceased,
Respondent.

PETITION FOR REHEARING OF ORDER DENYING PETITION FOR WRIT OF CERTIORARI.

JOHN R. VINTILLA,
Hanna Building,
Cleveland, Ohio,
Attorney for Petitioners.

THE GATES LEGAL PUBLISHING CO., CLEVELAND, OHIO—TEL. (216) 621-5647

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Petitioners pray that this Court grant rehearing of its order of May 27, 1968, denying the petition for writ of certiorari, and that a writ of certiorari issue to review the judgment of the Ohio Supreme Court in the above entitled case as prayed for in the petition filed March 29, 1968, herein.

REASONS FOR GRANTING REHEARING AND ISSUING THE WRIT.

1. The Ohio courts, including the Supreme Court of Ohio, have consistently discriminated against these petitioners and all litigants who happen to be of Romanian citizenship. They have condoned flagrant violations of the rights granted to Romanian heirs by the laws of Ohio in a "persistent and subtle" way, which would not have been

tolerated had the parties resided in the United States. Mr. Justice Douglas in his dissenting opinion in this case very correctly ascertained that "there seems to be *some* basis for believing that the case is a relic of the Cold War and that petitioners were discriminated against * * * because of their Romanian citizenship * * *." We represent, sincerely, that a scrutiny of the entire record of this cause, on the merits, along with other similar cases in Ohio, will readily disclose to any impartial observer that there is very *definite and abundant* basis for concluding "that the case is a relic of the Cold War and that petitioners (and others similarly situated) were discriminated against because of their Romanian citizenship * * *."

We invite the attention of this Court to two other cases, similar in nature and brought before this Court, wherein gross and flagrant violations were perpetrated against the rights of Romanian heirs, which violations were subtly condoned by the Ohio courts, and which cases were denied review by this Court. We have reference to the cases of *Etel Ober, et al. v. James C. Nagy, et al.*, October Term, 1967, No. 106, cert. denied October 16, 1967, and *Ernest Fogarascher, et al., v. Fricke*, October Term, 1966, No. 221, cert. denied October 10, 1966. In the *Nagy* case, the rights of Romanian citizens as heirs to a decedent's estate were denied arbitrarily by the Ohio courts in the face of abundant documentary evidence and uncontroverted testimony establishing heirship, and despite the favorable ruling of a Referee designated by the Probate Court to hear the petition to determine heirs. In addition, counsel of record informed all the courts, which concluded that there are no heirs in Romania, that he had met with the heirs in Romania, had examined their official identity cards, and had them photographed for the record of the case. This, plus a last desperate appeal to the judges

who perpetrated this travesty of justice, fell upon deaf ears (see Appendix I attached hereto).

The decision of the Ohio courts in the *Fricke* case is totally without legal justification, and the only reasonable explanation of the result is that the courts deliberately refused to protect and preserve the rights of "parties residing behind the Iron-Curtain." Reasonable minds can reach no other conclusion.

The *Fricke* case involved a conflict between heirs of the decedent who live in Romania and a party, who claimed to be the common law wife of the decedent, and who resides in West Germany. This party, through a Cleveland lawyer, belatedly made a claim to the estate as an alleged common law wife. The contention of being a common law wife was asserted despite the fact that all the close friends and acquaintances of the decedent, with whom he lived in Cleveland, stated that the decedent left no surviving spouse, see Statement of Facts, page 3, and Appendix E, Petition for Writ of Certiorari, *Fogarascher et al. v. Fricke,* October Term, 1965, No. 221. The proceeding in the Probate Court, by which the alleged surviving spouse sought to participate in this estate, was not brought to the attention of the heirs in Romania, either by actual notice or by publication. There was no effort made, whatsoever, to apprise the heirs in Romania of the pendency of the action and to afford them an opportunity to present their objections. And all of this was condoned by the courts in disregard of the fact that the record of the Probate Court revealed that the decedent left heirs in Romania, and despite the knowledge on the part of counsel of record for the alleged spouse that undersigned counsel had represented and continues to represent the rights and interests of Romanian citizens to a decedent's estate in Ohio and elsewhere.

The injustice of the *Fricke* decision was further compounded by another instance of a gross violation of the rights of the Romanian heirs. The only evidence which was submitted to establish that the party was the common law wife upon which the Probate Court decided that issue was the testimony given by way of deposition in Germany by the alleged common law wife, who is not permitted to testify in such a case under Ohio law, and her family and friends in Germany. Once again, the deposition was taken without any notice, either actual or by publication, and without an opportunity, to the heirs in Romania, to present their defense or objections to the claim of the alleged surviving spouse. Although these serious legal defects were specifically and repeatedly brought to the attention of all the Ohio trial and appellate courts, the constitutional safeguards accorded to non-resident heirs by the Ohio and Federal Constitutions were of no avail to the complaining parties simply because of their place of residence and the nature of their citizenship. On the basis of the record in the case, there can be no other logical and reasonable explanation of the conclusion reached by all the courts through which the matter passed.

2. The issue of the constitutional right of equal protection of the laws and due process accorded to non-resident heirs who happen to be of Romanian nationality has been and continues to be one of large practical importance in the administration of decedents' estates in Ohio and other parts of our country. At the moment, it is clearly established and, therefore, indisputable, that the courts of Ohio do not protect or preserve the rights of Romanian citizens with that degree of impartiality and duty obligation required by the oath and nature of the judicial office. This practice has not abated and will continue despite the ruling in *Zschernig* and *Goldstein v. Cox*, 389

U. S. ____. The courts persist in the notorious practice of withholding distribution to those behind the "Iron Curtain" by engaging in subtle ways of abrogating their rights, as evidenced in the *Nagy* and *Fricke* cases. Other recent examples of this practice may be found in the case of *Michal Mora, et al. v. Reed S. Battin, Judge of the Probate Court of Trumbull County, Ohio,* now pending before a three judge court in the United States District Court for the Northern District of Ohio, Eastern Division, No. C 68-227, and the case of *Gorun, et al., v. Fall, et al.,* Civil No. 1623, which is to be heard by a three judge court in the United States District Court of Montana on June 27, 1968.

Of extreme relevance hereto is also the case of *Goldstein v. Cox,* 389 U. S. ____, 36 L. W. 4120. On January 15, 1968, this Court entered its Per Curiam order granting certiorari, vacating the judgment of the United States Court of Appeals, and remanding the case to that court "for further consideration in the light of Zschernig v. Miller, * * *." On March 8, 1968, said Court of Appeals entered its order remanding the *Goldstein* case back to the District Court "for consideration of the constitutional issues by a three-judge court pursuant to 28 U. S. C. Section 2281." Although, we believe that the Court of Appeals in *Goldstein* did not comply with this Court's mandate of January 15, 1968, nevertheless, in order to avoid further delay of a decision and final judgment in this matter, a Motion for Summary Judgment was filed in the District Court on the basis of the decision in *Zschernig.* Inexplicably, the Motion for Summary Judgment came on for hearing on April 23, 1968, before one District Judge, who did nothing at the time except indicate that he would take the matter under advisement. In view of the current activity of the New York Attorney General, it would appear that the disposition of the *Goldstein* case is in a state

of confusion, with no one in authority prepared to determine the precise status of the said cause, see Appendix II, III, IV, V, VI, annexed hereto.

To deny a full scale review of the instant cause is to permit the state courts to continue in their abusive and improper practices toward the rights of non-resident heirs residing in countries whose policies they disapprove, and to encourage trespassing by the states in "an area where the Constitution contemplates that only the National Government shall operate."

The decision in this and the other cases referred to herein, "indeed, illustrate the dangers which are involved if each state, speaking through its probate courts is permitted to establish its own foreign policy."

CONCLUSION.

For the reasons set forth above and in the petition for writ of certiorari, it is respectfully urged that rehearing be granted and that, upon such rehearing, a writ of certiorari issue to the Supreme Court of Ohio.

Respectfully submitted,

JOHN R. VINTILLA,
Counsel for Petitioners.

CERTIFICATE OF COUNSEL.

John R. Vintilla, of counsel for the Petitioners herein, hereby certifies that the foregoing Petition for Rehearing is presented in good faith, and is not for purposes of delay.

JOHN R. VINTILLA.

APPENDIX I:

6 December 1967

Honorable Frank J. Merrick,
Judge, Probate Court
of Cuyahoga County
Court House
Cleveland, Ohio 44113

Re: Estate of Theresa Kovacs
Petition to Determine Heirship
Case No. 640974

My dear Judge Merrick:

I am writing you in accordance with the accepted and established legal principle that "it is never too late to undo an injustice."

Believing firmly, as I do, that the sole objective of our judicial tribunals is to assure, within human possibility, that substantial justice shall be secured to all who may come before the court, I am taking the liberty of appealing to your sense of fair play in the resolution of the instant matter.

In view of my steadfast and unshaken belief that a serious injustice has been done to my clients in this matter, I have taken the case through the state courts, and then to the Supreme Court of the United States. Upon a denial of certiorari by the latter tribunal, I filed a petition for rehearing which also was denied.

As a result of the unique and unusual circumstances of this case, I am unable to believe that the mere exhaustion of judicial remedies can satisfy the ends of justice in this instance. I have in mind that the two heirs whom I represent are alive, that I have met and spoken with them, and that there is abundant probative evidence to that effect

with no rebuttal or contravention in the record of this fact. More important, however, I refer to my testimony and professional statement in the record, as an active member of the bar, that I have met with the heirs in Romania and obtained reliable and proper documentation of the fact that the heirs who I represent are alive. In the light of this unchallenged professional representation, I am unable to comprehend how the legal conclusion reached in this case may be considered valid and just.

The only conclusion which I can draw, therefrom, and, I believe, which any reasonable mind can conclude therefrom, is that the court through which this matter passed gave no credence, whatsoever, to my testimony and professional statement that the heirs in Romania are alive. Assuming that such was the case, it would appear to me that, at least, a serious probability was injected concerning the survival of the heirs in question, and, that, consequently, a court would want to pursue the reality of the issue further. The failure of any of the courts to explore this aspect further is the disturbing element of this case.

You should know that at the hearing before the Referee, it was suggested that the heirs here (two brothers who reside in Cleveland and principal parties to the action) would be willing to pay all expenses if their sister, Etel Ober, would come to the United States. Although, I felt that such an offer was insincere and made in the belief that the sister could not come from behind the so-called "Iron Curtain," it was not taken seriously by the undersigned for two independent reasons. First, it was believed to be irrelevant, and, certainly, there could be no valid basis for such a request. Secondly, and more important (the undersigned has had clients come here from Romania for court appearances in essential and proper situations),

the sister in Romania, Etel Ober, was not well and suffers from a heart condition (she is an elderly and heavyset woman). To compel her to come to the United States, without any justifiable and valid reason therefor, would require the undertaking of a serious responsibility by the undersigned. Nevertheless, this proposition was made known to Etel Ober by the undersigned, and she rejected it.

Inasmuch as the heirs in Romania did survive our decedent, and are alive at the date hereof (see letter of Etel Ober, attached), it would be a travesty of justice to allow the present order to stand. I, therefore, would suggest and sincerely request that you appoint a special commissioner to go to Romania to resolve the issue whether Etel Ober and Ioan Nagyivan, niece and brother of Theresa Kovacs, deceased, have survived our decedent. In connection with the travel of the commissioner to and in Romania, the undersigned hereby makes the following offer:

1. He will advance and pay for all essential expenses of travel, hotel and meals of the commissioner to fulfill the mission and duty assigned to him, as aforesaid.

2. If the special commissioner finds and concludes that my clients, Etel Ober and Ioan Nagyivan of Romania, survived our decedent, all expenses incurred by the special commissioner in his travel to and from Romania in connection herewith shall be the personal obligation and liability of James Nagy and Joseph Nagy, parties hereto, and the court shall order them to reimburse the undersigned for all sums advanced and paid by him.

3. The special commissioner appointed by the court must be approved by the undersigned.

As a suggestion, I would offer the name of Thomas Joyce, an employee and officer of your court.

Respectfully yours,

JOHN R. VINTILLA.

JRV:Dac
cc: Ellis V. Rippner, Esq.
Hon. Joseph H. Silbert
Hon. Charles W. White
Hon. J. J. P. Corrigan
Oscar A. Brown, Esq.

P.S. Mr. Vintilla is presently in Romania, and may be reached if necessary.

APPENDIX II.

16 April 1968

Office of the Clerk
United States District Court
United States Court House
New York, New York

Re: Goldstein v. Cox
Civil Action No. 66-4487

Gentlemen:

On March 8, 1968, the United States Court of Appeals, for the Second Circuit, entered its order remanding the above entitled cause to your court "for consideration of the constitutional issues by a three-judge court pursuant to 28 U. S. C. Section 2281."

As a result of the order of the Supreme Court of the United States in this case, 36 L. W. 4120 (1/15/68), whereby it remanded the case "for further consideration in the light of Zschernig v. Miller, 36 L. W. 4120 (1/15/68), a motion for summary judgment with affidavit and appendices annexed thereto were filed in this court by counsel for the plaintiffs. This motion for summary judgment was noticed for hearing in your court on the 23rd day of April, 1968 at 10:30 o'clock by local counsel of record in this matter.

As chief counsel for the plaintiffs, I have received conflicting and confusing reports regarding the hearing date and the manner of disposition of our motion for summary judgment. I, therefore, would appreciate an advice from your office concerning the hearing and disposition of our motion for summary judgment. In this connection, I wish to inform the court that the plaintiffs do not insist upon an oral hearing of the motion for summary judgment and shall so stipulate if same meets with the approval of our adversaries. If it is the practice and/or desire of the court to hear oral argument prior to its disposition of such motions, I should like to inform you that the oral argument will be made by the undersigned who will be out of the country from April 24th to May 15th.

In view thereof, I would appreciate your reply hereto on or before April 22nd if at all possible.

Respectfully yours,

JOHN R. VINTILLA.

JRV: Dac
cc: Emanuel Eschwege, Esq.
Daniel Cohen, Esq.
Assistant Attorney General

APPENDIX III.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
FOLEY SQUARE, NEW YORK, N. Y. 10007

April 17, 1968

John R. Vintilla, Esq.
550 Hanna Building
Cleveland, Ohio 44115

Re: Goldstein vs. Cox, 66 Civ. 4487

Dear Sir:

We received your letter of April 16, 1968 regarding the conflicting and confusing reports of the hearing date of your motion for summary judgment in the above entitled matter.

Please be advised it is set for Tuesday, April 23, 1968 at 10:00 A.M. in Room 506.

Furthermore, all motions are orally argued in this Court.

Very truly yours,

JOHN J. OLEAR, JR., *Clerk*
by RICHARD DILBERIAN
Motion Clerk

APPENDIX IV.

STATE OF NEW YORK
DEPARTMENT OF LAW
New York 13, N. Y.
488-3446

April 26, 1968

Re: *Goldstein v. Cox, et al.*

Hon. Charles H. Tenney
United States District Judge
United States Courthouse
Foley Square
New York, New York 10007

My dear Judge Tenney:

On Tuesday, April 23, 1968, your Honor, on the call of the motion calendar, directed that the motion for Summary Judgment returnable before you on that date in the above-entitled action be marked "Submitted." The undersigned had indicated that no papers had been prepared in opposition to the motion by reason of the remand of the case by the Court of Appeals to a Three Judge Court which had not yet been designated.

There is transmitted herewith an Affidavit in Opposition to the assumption of jurisdiction over this motion and action by a single District Court Judge, together with proof of service of such affidavit upon counsel for the appellants. This is done pursuant to a phone conversation with your law clerk, Mr. Peter Herbert, with whom I had

arranged for transmission of this affidavit to you on or before Wednesday, May 1, 1968.

Respectfully yours,

LOUIS J. LEFKOWITZ
Attorney General

By DANIEL M. COHEN
Assistant Attorney General.

DMC: af
cc: John R. Vintilla, Esq.
550 Hanna Building
Cleveland, Ohio

Emanuel Eschwege, Esq.
200 West 57 Street
New York, New York

APPENDIX V.

20 May 1968

Chief Judge of the
U. S. District Court
Southern District of New York
United States Court House
Foley Square
New York, New York 10007

Re: Goldstein et al v. Cox et al.

Dear Sir:

I am taking the liberty of writing to you in view of the apparent confusion of the disposition of plaintiffs' motion for summary judgment in the light of the mandate of the Supreme Court of the United States in this case, and the remand order of the United States Court of Appeals for the Second Circuit to this court of March 8, 1968.

Inasmuch as we deem the mandate of the Supreme Court of the United States and the remand order of the Court of Appeals self-executing, as chief counsel for the plaintiffs in the above entitled cause, I would sincerely appreciate a communication from your court about the disposition of plaintiffs motion for summary judgment heretofore filed in your court.

Respectfully yours,

JOHN R. VINTILLA,
Chief Counsel for Plaintiffs

JRV: Dac
cc: Emanuel Eschwege, Esq.
Daniel M. Cohen, Esq.
Assistant Attorney General

APPENDIX VI.

UNITED STATES DISTRICT COURT
New York, N. Y. 10007

May 24, 1968

John R. Vintilla, Esq.
550 Hanna Building
Cleveland, Ohio 44115

Re: Goldstein, et al. v. Cox, et al.

Dear Sir:

I respond to your letter of May 20, 1968. You pose certain questions which I do not believe it to be my responsibility to answer.

If you had given me the index number of the case I might have been in a position to quickly ascertain the information which you desire and supply it, but I do not consider it my obligation to consult the indices of this court to ascertain the docket number of the case in which you are interested.

Finally, if you are appearing in this court for the purposes of this case only, I would appreciate your supplying me with the name and address of a member of the bar of this court authorized to represent you here.

Very truly yours,
SIDNEY SUGARMAN.